

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6333 of 1986

WITH

CIVIL APPLICATION NO. 1582 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos 1 to 5 No.

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BG TUNDIA

Versus

STATE OF GUJARAT

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Appearance:

Mr.A.N.Raval for the petitioner.

Mr.D.A.Bambhanja for the Respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/96

ORAL JUDGEMENT

Heard learned counsel for the parties.

The petitioner challenges in this petition the order of the respondents dated 31.7.1986 under which the petitioner was to be compulsorily retired under sub-rule (1) of Rule 161 of BCS Rules and the order of the even date at Annexure 'C' under which the inquiry was

initiated against the petitioner was ordered to be continued under Rule 189-A of BCS Rules. The learned counsel for the petitioner submits that the order dated 31.7.1986 under which the petitioner was ordered to be compulsorily retired has been withdrawn and the petitioner is ordered to be reinstated back in the service from 28.7.1994. This order has been passed on 25.1.1995. In view of the fact that the order impugned in this petition has been withdrawn, this writ petition does not survive and it has become infructuous. The learned counsel for the petitioner contended that under the order dated 25.1.1995 the petitioner was ordered to be reinstated back in the service but he was not given the benefits of the arrears of salary etc. from 31.7.1986 to 28.7.1994 and for this period he was to be given notional benefits. He further contended that the petitioner by filing Civil Application No. 1582 of 1996 challenges the order dated 25.1.1995 to the aforesaid extent and prays for giving him all the benefits for the aforesaid period. The order dated 25.1.1995 has been passed after filing of this Special Civil Application. Different cause of action may have accrued to the petitioner, however, it cannot be allowed to be challenged in this Special Civil Application and more so by filing this Civil Application the petitioner cannot be allowed to enlarge the scope of this Special Civil Application. The Civil Applications are normally for furtherance of the proceedings of the Special Civil Application for some interlocutory orders in process of the proceedings but not by way of substantive relief and thereto when a fresh cause of action which has subsequently accrued. By way of this Civil Application the petitioner cannot pray for the relief which is not prayed in this Special Civil Application.

In view of this fact, this Special Civil Application is dismissed as having become infructuous. On dismissal of this Special Civil Application, Civil Application No.1582 of 1996 also stands dismissed. However the dismissal of this Civil Application and Special Civil Application will not come in the way of the petitioner if he so feels to challenge the order dated 25.1.1995. Rule is discharged. No order as to costs.

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